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22832 7590 02/21/2008 Kirkpatrick & Lockhart Preston Gates Ellis LLP (FORMERLY KIRKPATRICK & LOCKHART NICHOLSON GRAHAM) STATE STREET FINANCIAL CENTER One Lincoln Street BOSTON, MA 02111-2950			EXAMINER PHAM, HUONG Q	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/081,273
Filing Date: February 21, 2002
Appellant(s): CARMANT ET AL.

MAILED
FEB 21 2008
GROUP 3700

CARMAN ET AL
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 5/2/2007 appealing from the Office action mailed on 11/21/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

This appeal involves claims 1-3, 6-10, 12-14, 17-20, 23-26, 28-30, 33- 41.

(4) Status of Amendments After Final

The appellant's statement of the status of Amendments After Final contained in the brief does not acknowledge that appellant's Amendment After Final filed on 4/26/2007 was not entered (note the Advisory Action mailed on 6/12/2007).

In addition, the followings are the Examiner's reasons for not entering the proposed changes to claims 1, 18, 33, 40, and 41 in the Amendment After Final filed on April 26, 2007 :

1) Under the rejection of under 35 U.S.C. 112, second paragraph:

The proposed Amendment After Final filed on April 26, 2007 to delete the phrase " or the like" from claims 1, 18, 33 would change the scope and structural limitations of claims 1, 18, 33, and therefore would need further consideration and/or search.

2) Also, note that the proposed Amendment After Final filed on April 26, 2007 to delete the phrases "second axis" and "third axis" (in claims 40,41) would render the scope and structural limitations of claims 40 and 41 broader.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner:

The rejection of claims 1, 18, 33 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement as contained new matter, is hereby withdrawn in response to Appellant's argument that the recitation in claims 1-18 and 33 of "pistol grip" and "substantially complete revolution" comply with the enablement requirement of 35 U.S.C. §112.

The examiner has reviewed the specification, and the support for "pistol grip" is found on page 4, lines 11- 14 of the specification, under the heading " Background of the invention" , and the support for the phrase "substantially complete revolution" is shown in Figure 3.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5331989

Stephens

7-1994

(9) Grounds of Rejection

The following ground(s) of rejection as set forth in the Final Office Action mailed on 11/21/2006, are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 18, 33, and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As for claims 1, 18, and 33, the phrase "or the like" render the scope of the claim indefinite. It's unclear what structure are included in the phrase "the like".

As for claim 37, the meaning of the phrase "a pitch decreases from forward to rearward" is unclear. Note that on page 8, the specification defines the pitch of the

helix 5 as " the distance between adjacent turns of the helix measured along a line parallel to its axis 11, decreases, as the helix extends rearward to end 9". However, the distance between turns is arbitrary. The distance between turns depends on how one would decide how or where to define or begin a turn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- 3, 6- 10, 12-14, 17- 20, 23- 26, 28-30, and 33- 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Stephens (5,331,989).

As for claim 1, Stephens shows every claimed feature of claim 1 including a handle 17 (figure 5) capable for being used as one handed ergonomic manipulation of a tool "or the like", comprising a forward and rearward ends, an attachment post 11 (figure 5) at the forward end of the handle, the post having a first longitudinal axis, a connector at the forward end of the post, constructed to be able to releasably attach a tool 30 "or the like" (figure 8. Note that member 30 is capable of being used as a tool "or the like") to the handle; a grip 17 fixed to the attachment post 11 , the grip having a second longitudinal axis fixed to the attachment post 11 and extending rearward

therefrom, with the second axis extending transverse to said first axis, a seat portion 26, 27 fixed to the grip and extending rearward therefrom to underlie the bottom of the user's wrist when the grip is grasped without restraining side to side flexure of the wrist (note in figure 5 that a user is able to flex the wrist from side to side up to certain degree when the grip 17 is grasped) ; a band like-elongate brace 63, 65 (note figures 1, 2 and 5), integral with and extending from one side of the seat portion 26, 27 , the brace extending in a continuous helix (note figures 1, 2, 5 and 4) that wraps progressively and, in cooperation with the seat portion, 26, 27 defines an open space to accommodate and surround the lower arm of the user, from the wrist to the rearward end of the device.

Note that the attachment post 11 is constructed with a coupling at means (figure 14) at forward end which is capable for attachment to a tool or the like (the foot member 14 is capable of being used as a tool). Note that Figures 4,5 show the brace 63, 65 with a top edge higher than a lower edge, and therefore the brace 65 is constructed in the form of a helix as recited. One tracing the top edge of the brace 63, 65 from the lower edge in figures 4, 5 would follow a helical path to the top edge of brace 63, 65. This would broadly comprehend in the form of a helix.

As for claim 2, to any extent that applicant open space is conical, so is the open space circumscribed from the heel engaging portion 27 up to the brace 65 of Stephen (note figure 5, from point 27 to points 63, 73. Note that it appears that applicant's conical open space shown in figure 1a includes seat portion 4). As for claim 3, note that the attachment post 11, the grip 17, the seat 27, and the brace 63, 65 are integrally formed .

As for claim 6, note that the first and second axes intersect in an acute angle. As for claim 7, note that the second axis and the plane of the seat 27 intersect at an angle which is supplementary to the acute angle.

As for claim 8, note in figures 2, 4 that the helix angle increases from forward to rearward. As for claim 9, note in figures 2, 4 that the radius of curvature of the helix increases from forward to rearward 9 . As for claim 10, note that the brace 63, 65 has a substantially straight portion at its distal end (note in figure 2 that a portion of the brace 63, 65 has substantially parallel proximal and distal edges . This portion of brace 63, 65 is constructed with a "substantially straight portion") . As for claims 12 -14, note that the brace 63, 65 is oriented with respect to the other elements of the device, and when a person with a small forearm (or a child) uses the brace, the wrist is capable of being free to flex as recited. As for claim 17, note that a portion of the surface of the seat 26, 27 is "substantially" flat from forward to rearward (noted figure 2 of the drawings attached to the non-final Office Action mailed on 3/17/2006 : a copy of figures 2-5 , as attached to non-final Office Action mailed on 3/17/2006 to show how the Examiner interprets Stephen's Figures 2-5 , is attached hereto with this Examiner's Answer). Note that claim 17 only requires that the seat is " substantially flat from forward to rearward" . Note in figure 2 (attached to the previous Office Action mailed on 3/17/2006) that the drawn narrow portion of the seat 26, 27 is " substantially flat from forward to rearward". Note that to any extent that applicant 's seat portion 4 is flat (as shown in applicant's figure 1a), so is the seat portion of Stephens.

As for claims 18- 20, 23- 26, 28-30, 33- 41 note the comments relative to the above claims.

(10) Response to Arguments

Appellant 's arguments have been fully considered but they are not persuasive.

Note the comments above.

1) In response to Appellant 's argument that the recitation in claim 37 of the phrase "a pitch decreases from forward to rearward" satisfies the claiming requirements of 35 U.S.C. §112, second paragraph, the examiner does not agree .

As regards to appellant's arguments about whether the meaning of the phrase" a pitch decreases from forward to rearward" is unclear or not:

Note that on page 8, the appellant 's specification defines the pitch of the helix 5 as " the distance between adjacent turns of the helix measured along a line parallel to its axis 11, decreases, as the helix extends rearward to end 9 ".

The Webster's New World Dictionary , Third College Edition, defines a pitch as:

- 1) The degree of slope or inclination.
- 2) The distance between corresponding points on two adjacent threads of a screw measured along the axis..

It appears that applicant has defined "pitch" (on page 8 of the specification) with the same meaning as the 2nd definition of "pitch" of The Webster's New World Dictionary , Third College Edition (shown above) .

However, note that appellant's drawings only show approximately one revolution of the helix (one either partial or complete revolution of the helix) .

Providing that appellant's drawings only show a helix with approximately 1 revolution, It is unclear how appellant defines, where and what part of the helix , in which the turns of the helix begin .

Therefore, with a helix having only one revolution as shown, or as claimed , It is the position of the examiner that the distance between turns is arbitrary. The distance between turns depends on how one would decide how or where to define or begin a turn. Therefore, it is the examiner's position that the meaning of the phrase " a pitch decreases from forward to rearward" is unclear .

The appellant argues that the phrase "or the like" has been proposed to be removed in the amendment filed April 26, 2006, and " Assuming entry of that amendment, the rejection as to that phrase would no longer apply" .

Note that the proposed Amendment After Final filed on April 26, 2007 to delete the phrase " or the like" from claims 1, 18, 33 would change the scope and/or structural limitations of claims 1, 18, 33, and therefore would need further consideration and/or further search.

Therefore, the proposed Amendment After Final filed on April 26, 2007 to delete the phrase " or the like" from claims 1, 18, 33 has not been entered.

2) In response to Appellant 's argument that the Stephens patent 5,331,989 fails to disclose a number of limitations recited in each of the claims, none of claims 1-3, 6-10, 12-14, 17-20, 23-26, 28-30 or 30-41 is anticipated, the examiner respectfully disagrees.

Appellant argues that Stephens does not disclose an ergonomic handle detachably connectable to a tool or the like, and does not disclose an attachment post having a connector at its forward end to releasably attach a tool. Note in figure 14, the foot member 14 is capable of being used as a tool " or the like" , which is capable of being releasably secured to post 11 by means of a connector (the socket 45 has grooves , and the end of post 11 would have structure capable to cooperate and releasably connect with the grooves of socket 45 forming the recited connector means).

Appellant argues that Stephen device has a "foot member 30 permanently attached to the end of the shaft by hard epoxy". The examiner does not agree. Note that in column 7, on lines 12-14, Stephens discloses that "the knob so formed will be in proper position for replacement foot members, as needed". Therefore, the foot member (30) as described is broadly interpreted to be "releasably attached" , that is capable of being detached from and is not "permanently attached", as claimed. Also, note in figure 14, the examiner interprets the foot member 14 is a tool, or the like, which is releasably secured to post 11 by means of a coupling, whereby the socket 45 forms the recited coupling means.

In response to appellant 's argument that claim 1 requires a seat portion to underlie the bottom of the user's wrist when the grip is grasped without restraining side to side flexure of the wrist.... , and that " Stephen discloses no such arrangement....", the examiner respectfully disagrees. Please note in figures 1 and 5 of Stephen (the drawings previously attached to the non-final Office Action mailed on 3/17/2006) that when a person (or a child) with a small/smaller forearm or wrist uses the device , the wrist is capable of flexing up and down , and from the left to the right some degree. Also, note that the seat portion 26 of Stephens extends along a plane defined by the line A-A as noted in figure 5 of the drawings previously attached to the non-final Office Action mailed on 3/17/2006 .

It is noted that in column 2, Stephens discloses that figures 2-5 are elevational views , not perspective views . Therefore, these views are at 90 degree side views of the device. There is no slight up angle or slight down angle views. If these drawings were drawn at angle, Stephens would have referred to these drawings as perspective views.

In response to Appellant's arguments that Stephen does not disclose any component that can reasonably be considered as being a continuous helical element, and does not disclose a band-like elongate brace that (1) extends from a side of the seat portion, (2) extends rearwardly in a continuous helix that (3) wraps progressively to define, in cooperation with the seat portion, a "substantially" complete revolution about an open space to accommodate the user's lower arm, the examiner does not agree.

As discussed in the 35 USC 102 (b) rejection of the claims, Stephen shows a band like-elongate brace 63, 65 (note figures 1, 2 and 5) integral with and extending from one side of the seat portion 26, 27 , the brace extending rearwardly in a continuous helix (note figures 1, 2, 5 and 4) that wraps progressively to define, and in cooperation with the seat portion, 26, 27 a “ **substantially** ” complete revolution (note figures 1, 1A, and 5) about an open space to accommodate and surround the lower arm of the user, from the wrist to the rearward end of the device (note that a copy of figures 2-5 , as attached to non-final Office Action mailed on 3/17/2006 to show how the Examiner interprets Stephen's Figures 2-5 , is attached hereby with this Examiner's Answer). Therefore , it is the examiner's position that Stephen 's structure also defines a continuous helix that wraps progressively to define, and in cooperation with the seat portion, 26, 27 a “ **substantially** ” complete revolution (as claimed).

In response to appellant's argument that" there is nothing in Stephens to suggest any helical element at all", note that the examiner relies on the teaching from the whole disclosure of the patent to Stephens, which includes the specification, all the drawings, and the claims. Note that the reference does not have to exactly mention the word" helix" or "spiral", and note that figures 1, 1A, and 2-5 of Stephens clearly teach this helix.

As for claim 8, note in figures 1, 1A, 2, and 4 that the helix angle increases from forward to rearward.

As for claim 9, note in figures 1, 1A, 2, and 4 that the radius of curvature of the helix increases from forward to rearward 9 .

As for claim 10, note that the brace 63, 65 has a substantially straight portion at its distal end (note in figure 2 that a portion of the brace 63, 65 has substantially parallel

proximal and distal edges). This portion of brace 63, 65 is constructed with a "substantially straight portion".

As for claims 12 -14, note that when a person with a small forearm (or a child) uses the brace 63, 65, the wrist is capable of being free to flex as recited (note figures 1 and 5) .

As for appellant's arguments about claim 16, they are moot since Appellant previously canceled claim 16 in the Amendment dated 9/18/2006.

As for claim 17, note that a portion of the surface of the seat 26, 27 of Stephens is "substantially" flat from forward to rearward . Note figure 2 attached to the non- final Office Action mailed on 3/17/2006 (a copy of the drawings is provided with this Examiner's Answer) which shows how the examiner interprets the seat portion 26 as a narrow extending area) .Therefore the seat portion 26 of Stephen shown in figures 2, 5 , is "substantially" flat , as recited.

As for claims 18-20, 23-26, 28-30, 33-41 note the comments above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Huong Q. Pham/

Examiner, Art Unit 3772

Conferees:

Patricia Bianco


Marc Jimenez


PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 500

February 7, 2008



